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General Assembly

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Sixty-seventh session
Agenda items 69 (a) and 83

Promotion and protection of human rights: implementation of human rights instruments

The rule of law at the national and international levels

Letter dated 13 February 2013 from the Permanent Representative of the Plurinational State of Bolivia to the United Nations addressed to the Secretary-General

I am writing to bring to your attention the fact that, on 25 January 2013, while conducting an operation to counter smuggling in the border area with Chile involving vehicles without the requisite documents, three conscripts of the Bolivian army — Alex Choque Quispe, age 21, Augusto Cárdenas García, age 19, and José Luis Fernández Choque, age 18 — were detained by the Chilean authorities. These Bolivian citizens are conscripts who, in fulfilment of a constitutional duty, were serving their one-year mandatory military service.

The report received from the General Command of the Bolivian Army indicates that a Bolivian military patrol identified seven vehicles without the requisite documents in the Challumajahuira area of Bolivia, also known as the La Queka pass, and managed to detain two of the vehicles, while five escaped; the alleged smugglers later abandoned one of the vehicles. The seized vehicles were left in the custody of the now detained military personnel. It should be noted that, in the region in question, the border between the two States is unmarked, and that the Bolivian personnel carried out all of the actions described in what they believed to be Bolivian territory.

After being caught, the alleged smugglers alerted the Chilean National Police (Carabineros de Chile). Officers immediately arrived on the scene and detained the soldiers, who offered no resistance and were later taken to Iquique by helicopter.

According to the above-mentioned report, the alleged smugglers, who had entered Bolivian territory with vehicles lacking the requisite documents and presumably stolen, admitted to the Chilean authorities (the carabineros) that they regularly engage in such criminal activity. Nevertheless, they received the full support of the Chilean police in the face of the Bolivian soldiers' actions, and were not arrested. In fact, the seized vehicle was returned to them solely on the basis of their word, without any proof of their ownership rights being provided.

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These actions constitute a clear violation of international treaties on international legal cooperation, in particular international instruments on countering transnational organized crime, the Inter-American Convention on Mutual Assistance in Criminal Matters, which was ratified by both countries, and the Agreement between Bolivia and Chile on Cooperation between the Bolivian National Police and the Carabineros de Chile, signed on 21 November 2008, which was also ratified by both countries. Article 1 of the Agreement calls for mutual cooperation with the specific goal of preventing and controlling criminal activity occurring in the two countries' territories.

When they detained the Bolivian conscripts, the Chilean authorities impeded or ignored those individuals' right to timely consular assistance, thereby violating the Vienna Convention on Consular Relations. In that regard, article 36 of the Convention calls for free and unrestricted communication between nationals of a State and their consular post, in particular in the case of arrest, detention or custody pending trial. It has been clearly established that, during the events in question, the soldiers did not have immediate and direct access to Bolivian consular authorities and that they signed documents in which they allegedly relinquished their right to such assistance, despite the extensive international legal precedents that regard such assistance as an inalienable right.

In these circumstances, prosecution and potential sentencing for the offences of unlawful bearing of firearms and illegal entry into the country do not apply to military personnel, as the scope of those offences is limited to private individuals (civilians). In that regard, it should be reiterated that the Bolivian soldiers are members of the country's armed forces and were carrying out their military duties in a counter-smuggling operation; they were detained in open violation of the Charter of the United Nations and, in particular, of United Nations General Assembly resolution 2625 (XXV) of 24 October 1970, which sets out the principle that States should settle their international disputes by peaceful means in such a manner that international peace and security are not endangered.

All attempts to free the military personnel have been in vain, as the Chilean authorities placed the Bolivian soldiers, who were carrying a gun as part of their routine counter-smuggling efforts, in pretrial detention. This decision is unfriendly, unneighbourly and disproportionate.

We stress that Bolivian military and police personnel exert their utmost efforts to combat the transnational crime of smuggling within the framework of the Convention on the Suppression of Smuggling, signed in November 1937 and ratified by both States, in which smuggling is defined as an international crime to be punished by both countries.

In addition, we underscore that in border areas, citizens of both countries live together in a spirit of peaceful coexistence, as they have the same needs of survival and face the same threats, such as those posed by organized crime. The fight against this scourge should therefore not be viewed as a hostile or aggressive act.

The unilateral action of the Chilean Government violates international law in respect of State immunity and the rules of international jurisdiction. By virtue of the principles of sovereignty and equality, those rules indicate that a State should not grant its domestic courts the jurisdiction to determine whether another State is responsible for alleged international violations.

This reasoning applies to the case at hand, as the three Bolivian soldiers were performing counter-smuggling functions mandated by the Bolivian State, which is the owner of the gun in their possession, having provided it for the fulfilment of their military duties. Therefore, the Bolivian soldiers should not under any circumstances be put on trial, as the underlying intention of the Chilean State is to judge the Bolivian State, which is in violation of the principle *par in parem non habet imperium*.

We call on the international community to pay due attention to this regrettable case and to take practical measures in response; we also call on the Republic of Chile to comply with international law and the relevant United Nations resolutions in order to ensure the personal integrity and immediate release of the Bolivian soldiers.

I should be grateful if you would have this letter circulated as a document of the General Assembly under agenda items 69 (a) and 83.

(*Signed*) Sacha **Llorentty Solíz**
Ambassador, Permanent Representative

United Nations A/67/744–S/2013/101

General Assembly
Security Council

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21 February 2013

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General Assembly
Sixty-seventh session
Agenda item 33
Prevention of armed conflict

Security Council
Sixty-eighth year

Letter dated 19 February 2013 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I am writing to you with regard to the letter from Syria, dated 15 February 2013 (A/67/745-S/2013/98), which once again aims at distracting the focus of the international community on the grave humanitarian consequences of the Syrian crisis due to the deliberate and indiscriminate assault of the Syrian regime on its people.

The letter is yet another futile attempt by the Syrian regime to cover up the truth. Such unfounded allegations cannot be taken into consideration and are nothing more than a failed regime's desperate and deceptive effort to legitimize, unavailingly, the situation in Syria, by refusing to assume responsibility and putting the blame on others. The regime wages an all-out war on its people, calls them "terrorists" and denies not only their legitimate aspirations but also their fundamental rights. Contrary to how the Syrian regime portrays it, the ongoing situation in Syria is not a fight against terror. It is a struggle for democracy against tyranny.

Regional peace and stability is under serious threat due to the brutal policies of the Syrian regime, spilling over to the neighbourhood.

Having rejected similar baseless allegations of the Syrian regime in various platforms in earlier instances, Turkey will continue to cooperate with the international community to support and extend a helping hand to the Syrian people, whose legitimate aspirations should be met without further delay.

I should be grateful if the present letter could be circulated as a document of the General Assembly, under agenda item 33, and of the Security Council.

(*Signed*) Y. Halit **Çevik**

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United Nations A/67/745–S/2013/98

General Assembly
Security Council

Distr.: General
19 February 2013
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Original: Arabic

General Assembly
Sixty-seventh session
Agenda item 105
Measures to eliminate international terrorism

Security Council
Sixty-eighth year

Identical letters dated 15 February 2013 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council

On instructions from my Government, I should like to draw your attention to the following information:

The Turkish Government continues to interfere blatantly, both directly and indirectly, in Syria's internal affairs. By doing so, it is violating the letter and spirit of the Charter of the United Nations, international law and the rules governing relations between States, thereby threatening peace and security in the region and the rest of the world. That Government has intensified the hostility of its stance towards Syria by attempting to hinder implementation of the political programme proposed by the President of the Republic and the subsequent practical steps taken by the Syrian Government to implement that programme as a peaceful, political solution to the crisis in Syria. It has also been putting pressure on certain members of the Syrian opposition to reject this programme. On the other hand, Turkey has allowed armed terrorist groups, including, most importantly, Al-Qaida, as well as the Nusra Front and other terrorist organizations, to assemble, take refuge, receive funding and arms, engage in smuggling and enter Syrian territory. It is also openly supporting and justifying the destructive acts of terrorism those groups commit, including the killing of innocent civilians and the systematic destruction of infrastructure, Government buildings, public and private factories and institutions, and public and private property.

Under the rules and principle of international law and the principles that govern international relations and good-neighbourly relations, the actions of the Turkish Government are a stark violation of the rules and principles of international law. The Turkish Government is in violation of Article 2, paragraph 4, of the Charter, which provides that "all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". It is also in violation of the Declaration on Principles of

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International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)), which provides:

> "... the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security".

Under the heading "The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter", the Declaration provides the following:

> "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law".
>
> "Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State".
>
> "Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State".

Under the heading "The principle of equal rights and self-determination of peoples", the Declaration provides: "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country".

The Turkish Government is also in violation of the 1986 judgement of the International Court of Justice in the case of *Nicaragua v. United States of America*. In that judgement, the Court stated that "... if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose is to overthrow its government, that amounts to an intervention in its internal affairs, whatever the political objective of the State giving support". This is precisely what Turkey is doing when it supports the armed Syrian opposition.

The Court further added that "... a prohibited intervention must be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely .... Intervention is wrongful when it uses, in regard to such choices, methods of coercion, particularly force, either in the direct form of military action or in the indirect form of support for subversive activities in another State".

Turkey also continues to violate Security Council resolution 1373 (2001), in particular paragraphs 3 (f) and (g), in which the Council calls upon all States to:

> "Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;
>
> "Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims

of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists".

In view of Turkey's continued and stark violation of the principles and rules of international law and good-neighbourly relations, it is incumbent on the international community, in its entirety, to prevent the Turkish Government and those regional and international actors that are conspiring against Syria from continuing in their course of action, which is tantamount to an act of aggression. It must also compel the Turkish Government to desist from intervening in Syria's internal affairs, violating its sovereignty and attempting to break up Syria and undermine its national unity and territorial integrity. It must furthermore be compelled to control its borders and cease harbouring, training, financing and supporting armed terrorist groups, including Al-Qaida, as well as the Nusra Front and other groups that cooperate with Al-Qaida, that are taking refuge and receiving training in Turkish territory and from which they are launching their operations.

The Syrian Government reiterates its respect for the friendly Turkish people. It believes that the actions of certain States and the Turkish Government, in particular, are aimed at hindering and undermining the significant measures taken by the Syrian Government to implement the political programme for resolving the Syrian crisis through the cessation of hostilities, as a matter of priority, in the context of a concerted effort aimed at initiating national dialogue, reconciliation and reconstruction, re-establishing stability and security in Syria and the region, and maintaining international peace and security.

I should be grateful if this letter could be circulated as a document of the General Assembly, under agenda item 105, and of the Security Council.

(*Signed*) Bashar **Ja'afari**
Permanent Representative of
the Syrian Arab Republic to the United Nations